

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

United States of America, Case No. 13-mc-87 (SRN/TNL)

Case No. 13-mc-87 (SRN/TNL)

Petitioner,

vs.

John K. Thornton,

St. Paul, Minnesota  
Courtroom 3B  
January 27, 2015  
1:30 p.m.

Respondent.

BEFORE THE HONORABLE TONY N. LEUNG

UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

13

ORDER TO SHOW CAUSE HEARING [DOC. 69]

15

## A P P E A R A N C E S

For the Plaintiff:

D. Gerald Wilhelm, Esq.  
United States Attorney's Office  
300 S. 4th St., Ste. 600  
Minneapolis, MN 55415

For the Respondent:

John K. Thornton  
*Pro se*

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Official Court Reporter: Heather Schuetz, RMR, CRR, CCP  
U.S. Courthouse, Ste. 146  
316 North Robert Street  
St. Paul, Minnesota 55101

## 1 P R O C E E D I N G S

## 2 IN OPEN COURT

3 (Commencing at 1:34 p.m.)

4 THE COURT: This is United States District Court for  
5 the District of Minnesota, and the case before the Court today  
6 for a motion hearing is captioned as follows: The United  
7 States of America, as Petitioner, versus John K. Thornton, as  
8 Respondent, case number 13-mc-87.9 At this time, starting with Petitioner, United  
10 States of America, identify yourself, Counsel, for the record,  
11 please.12 MR. WILHELM: D. Gerald Wilhelm, Assistant United  
13 States Attorney, for the United States, Your Honor.14 THE COURT: And I notice there's no one at opposing  
15 counsel table. I think we've been over this issue before.  
16 So, if Mr. Thornton is here, he can stay in the gallery if he  
17 wants. But he is certainly welcome to come up to counsel  
18 table with his attorney if he so chooses.

19 Mr. Thornton, for the record?

20 THE RESPONDENT: I'll cross the bar under threat,  
21 duress, and coercion, into the well.

22 THE COURT: Okay. Thank you.

23 All right. This is an order to show cause hearing.  
24 And I guess, Mr. Thornton, you want to let me know how you  
25 want to show cause, how you have or haven't complied with the

1 order of Judge Nelson?

2 THE RESPONDENT: Um, first of all, I want to state  
3 for the record that I'm cooperating as best I can, but I  
4 haven't received any direction from this Court or from the  
5 revenue officers involved, and especially not from  
6 Mr. Wilhelm. We wouldn't be here if this Court had ruled on  
7 the motions already pending that are overripe.

8 Let the record show that the Court should take  
9 judicial notice of the unambiguous statutes of the United  
10 States codified in Title 26 and the regulations promulgated by  
11 the IRS and the Federal Register.

12 Would you like me to continue?

13 THE COURT: Yeah, it's -- this is part of your  
14 showing cause why you shouldn't be held in contempt for not  
15 following Judge Nelson's order?

16 THE RESPONDENT: It is indeed. A notice to this  
17 Court, notice to the Inquisitor Wagner and the Inquisitor  
18 Wallin of the intention of filing a Complaint under  
19 26 U.S.C. 7433 and 26 C.F.R 301.7433 with the area director,  
20 first, pending six-month outcome, as is mandated under  
21 administrative statutes before filing in the United States  
22 District Court for damages. I've identified the area director  
23 for Minnesota as being Tim S. Sherrill of 211 West Wisconsin  
24 Avenue in Milwaukee. Civil damages for certain  
25 unauthorized -- under 26 U.S.C. 7433, civil damages for

1       certain unauthorized collections, and under 26 C.F.R  
2       301.7433-1, civil cause of action for certain unauthorized  
3       collections actions, I will assure that the recklessness, and  
4       intentionally and by reason of negligence, with proper notice  
5       filing with the area director wherein Inquisitor Wagner and  
6       Inquisitor Wallin have disregarded many provisions of the  
7       Internal Revenue Code and regulations promulgated under the  
8       Internal Revenue Code, including the ones listed in the Chief  
9       Counsel Notices that have been precluded in the November 24,  
10      2014, show cause hearing, and that Chief Counsel Notices that  
11      have application also in Tax Court were precluded from this  
12      Court and the inquisition conducted by Inquisitor Wagner.

13           Do I misunderstand what the Tax Code is tasked with?  
14           As pronounced in *Kuretski versus the Commissioner of Internal*  
15           *Revenue* on the D.C. Circuit Court of 2014, the Tax Court is in  
16           the business of interpreting and applying Internal Revenue  
17           laws -- see *Freytag*, 501 U.S. at 891 -- is not in the business  
18           of making those laws. Are these same Revenue laws used by the  
19           Chief Counsel Notices have their application limited only to  
20           the Tax Court wherein evidently they are different from the  
21           Internal Revenue laws in Tax Court than the Internal Revenue  
22           laws in the United States District Court and inquisitioned by  
23           Inquisitor Wagner. Now frankly, I've had enough of the  
24           continued harassment and arrogance and lawlessness of  
25           Inquisitor Wagner totally ignoring or claiming ignorance in

1       terms of the unambiguous statutes in the United States  
2       codified in Title 26 by Inquisitor Wagner including but not  
3       limited to 26 U.S.C. 7701(a)(23), Taxable Year; and  
4       26 U.S.C. 7701(a)(16), Withholding Agent, in the use of  
5       federal income tax liabilities, which is a completely  
6       subjective allegation with no specific meanings.

7               Without identifying how and which subtitles this tax  
8       liability allegedly arises under from Part 1, Subtitle A,  
9       Income Taxes, or --

10               THE COURT REPORTER: Mr. Thornton, please slow down.

11               THE RESPONDENT: I'm sorry. From Part 1,  
12       Subtitle A, Income Taxes; or from Part 20, Subtitle B, Gift  
13       and Estate; and/or from Part 31, Subtitle C, Employment Taxes;  
14       and/or from Subtitle D, Excise Taxes, comprised of in some or  
15       in any of Chapters 41, 42, 53, or 44. Wilhelm's letter to the  
16       Court from the inquisition, Wilhelm states, "I am filing  
17       Affidavits signed by Jeffrey Wagner relating to the  
18       interviews." But unfortunately the Declaration is not a --  
19       valid because at the bottom of the Declaration, line 22, "I  
20       make this Declaration under penalty of perjury and in  
21       compliance with this Court's order of November 5th, 2014."  
22       Nowhere does this alleged Declaration include that it is true  
23       and correct, and therein is not a valid Declaration.

24               Further, Mr. Wilhelm is prohibited from claiming  
25       facts not supported by valid Affidavits or Declarations. See

1       *Borbon versus City of Tuscan.* Summary judgment cannot be  
2 granted on the basis of statements of fact in the moving  
3 party's brief even though they are uncontroverted by an  
4 opponent. Similarly, the Court may not take cognizance of  
5 positions regarding the facts based upon exhibits that are  
6 merely parts of briefs that have not been otherwise verified  
7 and supported.

8               Or will this Court interdict and state that this is  
9 more of "harmless errors," including not entering into  
10 evidence or identifying all the administrative steps that have  
11 been followed. No one is to identify not even one of these  
12 administrative steps or enter any of the administrative record  
13 into evidence in compliance with 7491(c) --

14               THE COURT: Mr. Thornton, can you take a breath  
15 there?

16               THE RESPONDENT: Sure.

17               THE COURT: I know you're reading from a prepared  
18 statement. I just want to make sure that we're going at a  
19 rate that doesn't unfairly tax our court reporter.

20               THE RESPONDENT: Sure. Sorry about that.

21               THE COURT: Please continue.

22               THE RESPONDENT: In compliance with 7491(c), as  
23 Inquisitor Wagner appears to have zero burden of proof so far,  
24 I've entered into evidence administrative step evidence and  
25 administrative procedures as evidence. I've entered some of

1 the administrative steps and administrative procedures of the  
2 Thorntons' administrative record into this Court as evidence  
3 that this Court shall take judicial notice of. But Inquisitor  
4 Wagner, Wilhelm, and this Court to date refuse to acknowledge  
5 this administrative evidence consisting of a Form 4549,  
6 Examination and Changes; and letter dated October 27th, 2010,  
7 for 2001, 2002, 2003; a Notice of Deficiency dated March 15th,  
8 2011, with Forms 886-A and worksheets, which contain also  
9 penalties under 26 U.S.C. 6651(a)(2) that mandates that a  
10 Substitute for Return under 6020(b) exist if no Form 1040 OMB  
11 1545-0074 had been filed.

12 Inquisitor Wagner has the burden of proof on 6020(b)  
13 Substitute for Returns. It is conclusive by holdings and  
14 pronouncements of the Tax Court and the attachments of Chief  
15 Counsel Notice 2007-005 -- subjecting litigating position for  
16 returns prepared under 6020(b) -- that the IRS has the burden  
17 of proof under 26 U.S.C. 7491 to present evidence for a valid  
18 Substitute for Return under 26 U.S.C. 6020; returns prepared  
19 for or executed by the secretary of Form 44 -- 4549, Income  
20 Tax Examination Changes or equivalent; and of Form 886-A,  
21 Explanation of Items, appropriate issue lead sheet or similar  
22 form; also a Form 13496 Certification signed and dated by an  
23 IRS officer certification is a *sine qua non* for procedurally  
24 valid and legal Substitute for Return under 26 U.S.C. 6020(b)  
25 that the IRS can and will defend, according to the Chief

Counsel. If these essential elements are not present, then as stated in the Chief Counsel Notice 2007-005, the Court must dismiss the case.

Question: Does the Substitute for Return 6020(b) Code section have application in this Court in the inquisition conducted by Inquisitor Wagner as in Tax Court? Am I mistaken in my information that the Tax Court was to interpret and apply the Internal Revenue Code from Title 26 as stated in pronouncement and holding within *Freytag versus Commissioner of Internal Revenue*, 501 U.S. 868, 1991, to wit it was established by Congress to interpret and apply the Internal Revenue Code in disputes between taxpayers and the Government. It construes statutes passed by Congress and regulations promulgated by the Internal Revenue Service.

Evidently, I'm mistaken that the Inquisitor Wagner, Wilhelm, and this Court are totally isolated from what Thornton believe was one and the same Internal Revenue Code used in the Tax Court is also the one and same as used in this Court by Inquisitor Wagner and Wilhelm. Is the Internal Revenue Code interpreted --

THE COURT REPORTER: Mr. Thornton, please slow down.

THE RESPONDENT: I'm sorry. I don't realize I'm going that fast, I guess.

THE COURT: Do you have a -- can you identify the

1       document you're reading from? Is that the one that's been  
2       submitted to the Court or not?

3               THE RESPONDENT: It was -- it was part of a document  
4       that was submitted to the Court --

5               THE COURT: Can you identify where it is so maybe we  
6       can follow along a little bit?

7               THE RESPONDENT: I don't have -- it was  
8       extrapolated. I wanted to raise the important points, but I  
9       don't have it flagged in my copy --

10               THE COURT: How many pages left do you have of your  
11       written statement there?

12               THE RESPONDENT: I have, um, two and a half pages  
13       left -- well, two pages, actually.

14               THE COURT: All right. Why don't you just keep on  
15       going. Just -- I'd just ask you to slow down a little bit  
16       again --

17               THE RESPONDENT: Absolutely. Sure.

18               THE COURT: The court reporter is trying to do her  
19       job, and it's very difficult if you just read too fast.

20               THE RESPONDENT: Is the Internal Revenue Code  
21       interpreted and used in the Tax Court the same Internal  
22       Revenue Code interpreted by this Court and used binding upon  
23       Inquisitor Wagner, binding in the inquisition, and binding  
24       upon Wilhelm? With all issues of Chief Counsel Notice  
25       2007-005 precluded in the ordered inquisition of Thornton to

1       be conducted by Inquisitor Wagner, with the Chief Counsel  
2       Notice cited previously only applying to the Tax Court,  
3       including -- precluding Title 26 of the United States Code --  
4       declared by Wilhelm and this Court by its silence? What is my  
5       defense or course of action? What statutes of the United  
6       States or regulations have application in the inquisition  
7       conducted by Mr. Wagner?

8                   Inquisitor Wagner claims that there is an assessment  
9       which already exists against Mr. Thornton for those tax years.  
10       This is a flat out lie. I challenge Inquisitor Wagner to  
11       provide proof of this claimed assessment, documents, and also  
12       to identify the specific assessment regulation promulgated in  
13       the Federal Register for Part 1, Subtitle A, Income Taxes,  
14       mandated by 26 U.S.C. 6203, Method of Assessment.

15                  And further, that it must be in compliance with  
16       1 C.F.R 21.40, 1 C.F.R. 21.41, and specifically 1 C.F.R 21.43.  
17       Under the authority of the A.S. -- A.C.F.R, 1 C.F.R 21.40 of  
18       authority citations, each section subject to codification must  
19       include or be covered by a complete citation of authority  
20       under which the section is issued, including general or  
21       specific authority delegated by the statute. Under the  
22       authority of the A.C.F.R., 1 C.F.R 21.41, under Agency  
23       Responsibility, each issuing agency is responsible for the  
24       accuracy and integrity of the citations of the authority in  
25       the documents it issues. Each issuing agency shall

1 therefore -- shall formally amend citation of authority in its  
2 codified material to reflect any changes therein.

3                   Under the authority of the A.S -- A.C.F.R, 1 C.F.R  
4 21.43, on placing and amending authority citations defines the  
5 requirements of the citations, i.e. statutory authorities, to  
6 be located behind the Table of Contents for a complete C.F.R  
7 part or subpart, to wit placing the authority citations vary  
8 within -- with the type of amendment.

9                   If the -- if the document sets out an entire C.F.R  
10 part, the agency shall place the complete authority citation  
11 directly after the Table of Contents and before the regulatory  
12 text. The agency shall present a centralized authority  
13 citation. The authority citation shall appear at the end of  
14 the Table of Contents for a part or after each subpart.

15                   And finally, from the inquisition transcript from  
16 Mr. Wallin, he states: And there two issues really, the  
17 income tax issue and the collection information statement.  
18 You have two Summons that were served, so although your  
19 answer -- I can understand for the income tax information,  
20 although I perhaps don't agree with it. According to  
21 Inquisitor Wallin, he understands at least the answer for the  
22 income tax information, but Inquisitor Wagner doesn't. How am  
23 I supposed to proceed or know how to proceed with a -- an  
24 arbitrary inquisitorial proceeding?

25                   THE COURT: Anything else?

1 THE RESPONDENT: No.

## 2 THE COURT: Government?

3 MR. WILHELM: As briefly as I can, Your Honor, D.

4       Gerald Wilhelm, Assistant United States Attorney, representing  
5       the United States. I received this morning a 27-page,  
6       11,400-word response from which Mr. Thornton has quoted  
7       liberally this afternoon. I attempted to digest the same and  
8       will try to respond to its major components.

9                   It appears that Mr. Thornton is saying that he  
10                  should be discharged from this order for two fundamental  
11                  reasons. One is that he has complied with it and, second,  
12                  that the entire proceeding itself is illegal for two reasons:  
13                  First, that certain administrative steps were not followed  
14                  prior to the issuance of the Summons; and secondly, that part  
15                  of the proceeding is based on the signature of a Declarant as  
16                  opposed to an Affiant.

17                   With respect to the first issue that I just  
18 mentioned, Mr. Thornton is claiming that he has complied by  
19 responding in the manner that's set forth both in the  
20 transcript that he submitted with his filing this morning and  
21 in Officer Wagner's Declaration. As I understand the  
22 argument, Mr. Thornton is saying that the words of the Summons  
23 require a response only if he is a withholding agent, which he  
24 defines as "A person who is obligated to forward certain taxes  
25 withheld from another person to the United States government."

1 He appears to be arguing that the Summons, by its very words  
2 and by the interpretation he applies to it --

3 THE RESPONDENT: Objection.

4 THE COURT: Overruled.

5 MR. WILHELM: -- appears to apply only to a person  
6 who is a -- as I said, a withholding agent. Very clearly,  
7 Subtitle A, which he's arguing does not apply to him, does  
8 apply to him. Twenty-six U.S.C. --

9 THE RESPONDENT: Objection. Foundation.

10 THE COURT: You are, Mr. Wilhelm, reading off of his  
11 submissions to you, isn't it?

12 MR. WILHELM: Well, I'm reading from my notes from  
13 those submissions. I'm not reading from his submissions, Your  
14 Honor.

15 THE COURT: Okay.

16 MR. WILHELM: This is an argument based on my  
17 interpretation of what he filed.

18 THE COURT: Overruled.

19 MR. WILHELM: Subpart A of the Internal Revenue Code  
20 is found beginning at 26 U.S.C. § 1. That very plainly says  
21 that taxes imposed on every individual who earns income, not  
22 just upon a withholding agent. So, Mr. Thornton has not  
23 complied. His interpretation is incorrect, and he has not  
24 complied in that he has failed to produce --

25 THE RESPONDENT: Objection. Argumentative.

THE COURT: Overruled.

MR. WILHELM: In that he has failed to provide any of the books or records requested and required by the Summons.

Moving on now to the part of his filing which requests the dismissal of the proceeding. First of all, with respect to the Declaration versus Affidavit argument, 28 U.S.C. 1746 is very plain. And it says that in Federal Court, a Declaration is the legal equivalent of an Affidavit. One is neither favored nor disfavored over the other.

Mr. Wagner's Declaration is the same as an Affidavit, and so that argument must fail.

With respect to the dismissal based on failure to take certain administrative steps, Mr. Thornton is confusing two requirements. One, his argument is based on the statute which permits, but does not require, the secretary to file a substitute return in the event a taxpayer does not file returns.

THE RESPONDENT: Objection. Argumentative.

THE COURT: Overruled.

MR. WILHELM: The section Mr. Thornton refers to is Section 6020(b), which he claims requires the filing of a substitute return before a Summons can be issued. That section is cast in the permissive. It says the secretary "may" file such a return; it is not required to file such a return.

1                   Second, the two sections are separate. The section  
2 under which we are proceeding here is 7402 and 7604. The  
3 substitute return section is the section before, Section 6020.  
4 They are not related to each other, nor is one incorporated in  
5 the other by reference. And therefore, whether or not the  
6 secretary has filed a substitute return has no relevance  
7 whatsoever to whether or not the Summons should be enforced  
8 and Mr. Thornton ought to obey.

9                   We've been at this, Your Honor, for over a year.  
10 Mr. Thornton has been granted ample opportunity to air his  
11 grievances, which he has done. He admits in his filings he  
12 has filed no tax returns for quite some time. It is time for  
13 him to simply do what every other honest taxpayer in this  
14 country does --

15                   THE RESPONDENT: Objection --

16                   MR. WILHELM: -- and that's cooperate with --

17                   THE COURT: Sustained. I'll strike the "honest"  
18 part as argumentative.

19                   Go ahead. Please continue.

20                   MR. WILHELM: It's time for him to live up to his  
21 obligations as a taxpayer and a citizen, Your Honor, and  
22 that's to cooperate with the United States government --

23                   THE RESPONDENT: Objection. No foundation.

24                   MR. WILHELM: -- and to file his tax returns and to  
25 provide that information as necessary.

1 THE COURT: Overrule the objection.

2 Counsel, what's your position, has he complied with  
3 Judge Nelson's order?

4 MR. WILHELM: As we set forth in our filings early  
5 on, Your Honor, he has not.

6 THE COURT: Okay.

7 MR. WILHELM: His responses are insufficient.

8 THE COURT: Thank you.

9 Mr. Thornton?

10 THE RESPONDENT: Objection. Argumentative.

11 THE COURT: Overruled. Go ahead, Mr. Thornton.

12 | Reply.

16 THE COURT: I'll rule on that, and the record is as  
17 it stands.

18 There is this audio recording; I believe,  
19 Mr. Thornton, you supplied this, right? It's a transcription  
20 by Sheila D. Fearing --

21 THE RESPONDENT: Correct.

22 THE COURT: Did you want to make that -- it's like  
23 about 69 pages. Do you want us to make that part of the  
24 record here?

25 THE RESPONDENT: I do

1 THE COURT: All right.

2                           Mr. Wilhelm, do we -- you have a copy of that? Have  
3 you seen it?

4 MR. WILHELM: I do, and I've read it, Your Honor.

5 THE COURT: Do you have any objection to  
6 receiving -- the Court receiving this at Mr. Thornton's  
7 request?

8 MR. WILHELM: None, Your Honor.

11 THE RESPONDENT: Sure.

12 THE COURT: Okay. I'll mark it and, based on that,  
13 receive it without objection. So, it would be Respondent  
14 Exhibit 1, and that's an approximately 69-page transcript.

15                           Anything else, Mr. Thornton? Any other arguments or  
16 witness or anything like that?

17 THE RESPONDENT: No.

18 THE COURT: Okay.

19 Government, anything else from your end?

20 MR. WILHELM: Nothing further, Your Honor.

21 THE COURT: All right. Okay.

22 On August 1, 2014, the Honorable Susan R. Nelson,

23 United States District Judge for the District of Minnesota,

24 ordered that Respondent, John K. Thornton, comply with the IRS  
25 Summons at issue in this case. And that shows up in the

1 docket in this case, ECF number 23. On November 4, 2014, this  
2 Court issued an order that if Respondent failed to respond to  
3 this IRS Summons by December 8, 2014, the Court would  
4 recommend that Mr. Thornton be held in contempt for failing to  
5 comply with a court order. That was in ECF number 46.

6 The Government was then directed to inform the Court  
7 on or before December 9, 2014, whether Respondent had complied  
8 with that order, and that was also in ECF number 46. Now, we  
9 tried to have a hearing as scheduled on December 29, 2014 --

10 THE RESPONDENT: May I interject on that, Mr. Leung?

11 THE COURT: Um --

12 THE RESPONDENT: I never received notification --

13 THE COURT: Yeah.

14 THE RESPONDENT: -- of that meeting.

15 THE COURT: Yeah, okay. So noted.

16 And, in fact, when we appeared, the Court did have a  
17 concern about the notice issue, and so we reset it for today  
18 so that Mr. Thornton would have an opportunity to be prepared  
19 and to appear here today. And that was the exact basis of the  
20 Court's concern, that -- I believe we could have actually  
21 proceeded on that day, but in an abundance of caution, I  
22 thought it was better and more fair to provide you an  
23 additional opportunity to appear today --

24 THE RESPONDENT: I --

25 THE COURT: -- and that's why we set it for today,

1 and that's why we're all gathered here today.

2 So, at this point, then, again it's an order to show  
3 cause why it is that Mr. Thornton should not be held in  
4 contempt for not complying with Judge Nelson's order. And  
5 based on the information before the Court, it seems to me that  
6 there has been little to nothing done to comply with Judge  
7 Nelson's order.

8 THE RESPONDENT: Objection. Argumentative.

9 THE COURT: In fact, you know, as I go through the  
10 record, you know, just some samples of why it is there's  
11 noncompliance, frankly, just -- these are just some examples.

12 In the interview from December 4th that's in  
13 Respondent Exhibit 1, on Page 4, for example, that transcript  
14 that's been received, Mr. Wagner says: "Well, do you have any  
15 records as identified in the two Summons that you've been  
16 served?"

17 And the answer from Mr. Thornton, quote, is: "I  
18 have no books and records that are subject to any Part 1,  
19 Subtitle A, Income Taxes, for calendar years 2001 through  
20 2012, as defined in 26 U.S.C. 7701(a)(23) taxable year."

21 Just as a further example of the interaction,  
22 Page 5, Mr. Wagner: "Do you have any records as identified in  
23 the Summons?" That's a question to Mr. Thornton.

24 The answer was: "Asked and answered," by  
25 Mr. Thornton.

1                   And then Mr. Wagner talks about: "I'm looking here  
2 at the Summons. The Summons references bank statements,  
3 checkbooks, canceled checks, savings account, passbooks,  
4 certificates of deposits, deeds, vehicle registration  
5 certificates, investment documents, insurance policy related  
6 to the tax liability, which does exist" for the year -- "for  
7 you for 2001, '02, and '03. Do you have any of those  
8 records?" And that was a question to Mr. Thornton.

9                   The response was, from Mr. Thornton: "I have no  
10 books and records that have anything to do with any taxable  
11 year liability under Subtitle A, Part 1, Income Taxes."

12                   Then there were some further questions regarding  
13 individual income tax returns Summons. Mr. Wagner asked: "Do  
14 you have any records relating to 2004 through 2012 pertaining  
15 to your income?" That's directed to Mr. Thornton.

16                   The answer was: Again, I have no books and records  
17 that I have [sic] anything to do with any taxable year  
18 liability under Subtitle A, Part 1, Income Taxes.

19                   We skip forward in the transcript, another example  
20 on Page 12, line 10 through 12, there's an exchange.  
21 Mr. Wagner asked Mr. Thornton: "At what address do you  
22 reside?"

23                   The answer: "I don't reside anywhere."  
24                   "Where do you live?"

25                   I live with [sic] my wife's home.

1                   " And where is your wife's home located? "

2                   But then, you know, there's an answer to that, which  
3                   is good. You know, so we've got at least a confirmation of  
4                   where one resides -- or lives, I should say. But that's  
5                   probably the -- one of the first few affirmative, meaningful  
6                   responses to the question.

7                   There's another sample on Page 13: "What is your  
8                   date of birth? "

9                   Mr. Thornton: Uh, I was -- "I wasn't there at the  
10                   time. I don't know."

11                   THE RESPONDENT: Objection. I'd like to clarify.

12                   THE COURT: Um --

13                   THE RESPONDENT: I was born at conception. I have  
14                   no idea when my parents conceived me.

15                   THE COURT: So, Mr. Wagner asked: I don't know when  
16                   you were -- "You don't know when you were born?" Question.

17                   "It's on the Birth Certificate."

18                   Okay. Well, that's sort of responsive. It should  
19                   be on the Birth Certificate and the Government can look at it,  
20                   so that's good that there is a responsive answer.

21                   But then: "Where were you born?"

22                   "I don't know."

23                   "You don't know?"

24                   "No. I was just being born. I don't know where I  
25                   was born, no."

1                   "Okay. What's your occupation?"

2                   Uh, the response from Mr. Thornton: "It's not  
3                   really relevant. I have no books and records that have  
4                   anything to do with any subtitle -- with any taxable year  
5                   liability under Subtitle A, Part 1, Income Taxes."

6                   Skipping forward, Page 14: "What do you do for  
7                   employment?"

8                   Same answer, basically, roughly the same words: "I  
9                   have no books and records that have anything to do with," dot  
10                   dot dot, "Part 1, Income Taxes."

11                   So, the record pretty much goes on. There's  
12                   questions about, "Do you have a mortgage?"

13                   The response: "I have no books and records," dot  
14                   dot dot.

15                   Do you have any -- "Do you have a homeowners  
16                   policy?"

17                   Basically the same answer.

18                   "Who pays your homeowners insurance?"

19                   Basically no responsive answer, the same answer.

20                   "Who pays when you go out to eat?"

21                   Same. "I have no books and records" and so forth.  
22                   That was the response.

23                   Where do you -- "Where do you handle your financial  
24                   transactions? Where do you keep your banking and financial  
25                   accounts? What investments do you maintain?" You know, these

1 are spread out over a number of pages that the response to  
2 these questions are basically all, "I have no books and  
3 records that have anything to do with any taxable year  
4 liability under Subtitle A, Part 1, Income Taxes."

5 It talks about possessions, property, vehicles,  
6 cars, trucks, motorcycles, trailers, boats, aircraft. "Any  
7 beneficiary under a trust, estate, life insurance policy?"

8 Question to Mr. Thornton at some point: "Have you  
9 contributed to a trust? Are you a trustee or a fiduciary?  
10 Describe the transfer of ownership or any assets or property  
11 previously."

12 Basically the same answer, more or less, is, "I have  
13 no books and records that have anything to do with taxable  
14 year liability under Subtitle A, Part 1, Income Taxes."

15 So, this is just some examples of the nonresponse  
16 and the insufficient response to the Summons and does not, in  
17 fact, comply with the order of Judge Nelson and doesn't apply  
18 to the orders of this Court. So, in that case, the Court has  
19 provided ample opportunity to Mr. Thornton to comply  
20 substantially with Judge Nelson's order. I've again received  
21 the transcripts, reviewed the files, and frankly this is a  
22 nonresponsive, to use a more technical word, to the very  
23 practical questions that are asked and very fair questions are  
24 asked, I think, of --

25 THE RESPONDENT: Objection, Mr. Leung --

1                   THE COURT: -- of most people who live in this  
2 country.

3                   And so, therefore, Mr. Thornton, I will be  
4 recommending to Judge Nelson that you be found in contempt,  
5 and I will further recommend that you'd be allowed to purge  
6 this contempt by complying with IRS Summons.

7                   So, in many ways, it's something that's done all the  
8 time. I understand you have strong objections to, you know, I  
9 guess the authority of the government and so on and so  
10 forth --

11                  THE RESPONDENT: Objection. That's not true,  
12 Mr. Leung --

13                  THE COURT: Okay. I shouldn't say that. For  
14 whatever reason, you choose not to --

15                  THE RESPONDENT: I'm looking for proper application  
16 of the laws, sir --

17                  THE COURT: Let me just finish, and then you can  
18 finish your -- have your say.

19                  For whatever reason, you are not complying with the  
20 Summons. And, therefore, within 30 days of the order, that I  
21 would ask the Government that on or before February 27th,  
22 2015, you'll file with the Court a Declaration informing the  
23 Court whether Mr. Thornton has complied or substantially  
24 complied, to the best of his ability, with the IRS Summons and  
25 this Declaration we have filed with the Court electronically.

1       And the Government's counsel will be held to, of course,  
2       Rule 11 obligations of being candid and forthright with the  
3       Court. Any representations in that Declaration, obviously,  
4       has to be -- meet with that.

5           And if upon receiving that Declaration the Court  
6       determines that Mr. Thornton has not complied, well, frankly  
7       at that point, based on that Declaration, I will issue the  
8       Recommendation for a bench warrant and contempt. And we're  
9       going to just, you know -- either you're going to comply at  
10      some point; if you don't, there's going to have to be a  
11      Summons for your -- a warrant for your arrest at some point  
12      is, I think, what's coming down later on.

13           So I just -- again, I always, of course, hope to  
14      avoid just going down these roads. Obviously, I can't, you  
15      know, act for you, Mr. Thornton, in that. But --

16           THE RESPONDENT: So is that a threat, Mr. --

17           THE COURT: I believe, just as your -- I think your  
18      spouse was formerly in this case, she complied, and the case  
19      is over. And, you know, these are questions that people  
20      answer all the time, and so I hope that you do that. But in  
21      the meantime, I do -- I would recommend that you are -- find  
22      that you are in contempt and recommend that to the District  
23      Judge, and that you can cure your purge conditions and avoid  
24      the arrest warrant by complying with the Summons.

25           And Mr. Wilhelm, you'll submit that Affidavit, then,

1 on or before -- well, by February 27th.

2 Any questions, Government?

3 MR. WILHELM: Yes, Your Honor. As we indicated in  
4 our early filings this week, we had some difficulty personally  
5 serving Mr. Thornton with process, and I'm wondering whether  
6 the Court would determine that mail to 4128 Utica Avenue  
7 South, St. Louis Park, would suffice for service in these  
8 matters.

9 THE COURT: Um, if Mr. Thornton has another address  
10 he'd like to identify on the record --

11 THE RESPONDENT: No, that's fine. And I've shown up  
12 for every court where I've been notified. And I take  
13 exception to the one more chance and the 29th. I had no  
14 notification whatsoever. I did receive a letter from the  
15 Court early January that was followed up by a deluge of the  
16 same documents I only can assume was left at my wife's  
17 property by Mr. Wagner, which is completely unnecessary. I  
18 received the order from the Court I think the first week of  
19 January regarding this hearing, and I've shown up every time.  
20 So, it's not necessary to be belligerent with service of that  
21 type. So, they can just mail it to that address.

22 THE COURT: All right. Thank you, Mr. Thornton.

23 Okay. Again, if there's any way you can just comply  
24 with this, it would be wonderful, but I can't do it for you.

25 THE RESPONDENT: I would ask for a stayed proceeding

1 pending an appeal to the Eighth Circuit, which I fully intend  
2 to do as early as tomorrow.

3 THE COURT: All right.

4 Anything else, Mr. Thornton?

5 THE RESPONDENT: No.

6 THE COURT: All right.

7 Mr. Wilhelm?

8 MR. WILHELM: Um, the date for compliance and  
9 purging was February 20-what, Your Honor?

10 THE COURT: February 27.

11 MR. WILHELM: Twenty-seven. Thank you, Your Honor.

12 THE COURT: Thank you. We are in recess. Thank  
13 you, everyone.

14 **(WHEREUPON, the matter was adjourned.)**

15 (Concluding at 2:12 p.m.)

16 \* \* \* \*

17  
18 CERTIFICATE

19  
20 I, Heather A. Schuetz, certify that the foregoing is  
21 a correct transcript from the record of the proceedings in the  
22 above-entitled matter.

23  
24 Certified by: s/ Heather A. Schuetz  
25 Heather A. Schuetz, RMR, CRR, CCP  
Official Court Reporter